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General Duncan L. Clinch

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GENERAL DUNCAN L. CLINCH.

[To accompany bill H. R. No. 265.]

APRIL 4, 1840.

Mr. DAWSON, from the Committee of Claims, submitted the following

REPORT:

The Committee of Claims, to whom was referred the petition of General Duncan L. Clinch, report:

That General Clinch owned and occupied an extensive plantation in Florida, at and before the commencement of hostilities by the Seminole Indians; that in the year 1835, immediately after the war began, it was thought advisable by the commanding officer of the army then in Florida to occupy the houses of the petitioner on said plantation, and the plantation as a military post, it being contiguous to the seat of war, and because the products of the plantation, and others in the neighborhood, furnished the surest means to supply the army with rations and forage; that permission was given by General Clinch to the troops to take from said plantation what might be wanted, with the request that an account should be taken of whatever might be used by the officer in command, so that he might be able to make a proper and correct demand against the United States; that in September of the year 1835, Governor Call of Florida, then in command of the army, with the Tennessee and Florida volunteers, all mounted men, with between three and four hundred regular troops, and eight or nine hundred Creek Indians, occupied said plantation, and used the cane and corn thereon, with an immense saving to the United States; that the number of horses so subsisted are estimated at about fifteen hundred by General Clinch, and he has put the charge of each per day at 40 cents, and the number of days at 42; taking of each the lowest estimate contained in any of the testimony. General Clinch, believing that the laws organizing the Quartermaster's Department would enable the accounting officers of the Treasury to audit and pay his account, presented it to the said officers for settlement; but the opinion of the accounting officers was, that the law did not give them the authority to pay it, but that a special act of Congress was necessary to enable them to do so.

General Clinch claims, "for foraging the horses, &c., of the army of Governor Call on sugar cane and corn, for six weeks, while lying at Fort Drane in East Florida, in October and November 1836, say 1,500 horses, upon an average each day for 42 days, at the rate of 40 cents for each horse per day," which will make his claim against the Government amount to the sum of \$25,200. To sustain this claim, he submits, with his petition, the evidence of several of the officers of the army then in command in Florida.

First, the certificate of B. K. Pierce, lieutenant colonel of the United States army, which is in these words :

"ST. AUGUSTINE, *March 20, 1838.*

"I certify that I commanded the regular troops composing a portion of Governor Call's command; during his operations in Florida in the autumn and winter of 1836, and that I subsequently commanded the right division of his army, composed of the regular troops, the Indian regiment, and Colonel Warren's battalion of mounted men; that the army of Governor Call, composed of volunteers and regulars, was stationed at Fort Drane, the plantation of General Clinch, for nearly or quite six weeks (I believe) in the months of October and November; that during that period there were about two thousand five hundred (2,500) horses attached to the command, which were almost entirely foraged and sustained on the cane, corn, &c., taken from the plantation of General Clinch; and but for this cane and corn, nearly all of the above number of horses must have starved, and been lost to the service, and the operations of the army seriously crippled, or entirely checked, as corn or hay could not have been furnished from Black creek in time to have met the emergency; that when a small supply of corn and hay was sent to the abovenamed post, it is my impression that the corn must have cost at least from three to three and a half dollars per bushel, and the hay at not less than four dollars per hundred-weight; that the cane, corn, &c., was worth to the Government at least twenty-five thousand dollars, and that no equivalent amount of forage could have been placed at that post for a less sum; that free use was made of the cattle and swine found on the plantation by the troops; and that much injury was also sustained by General Clinch in the destruction of fences, &c., by the troops. I suggested to Governor Call the propriety of ordering a board of officers to assess the damages which General Clinch would be apt to sustain from the occupation of his premises by the troops; in the propriety and justice of which suggestion General Call concurred, and stated that it was his intention to do so; and furthermore, that my opinion was concurred in by other officers, that the losses sustained in the destruction of his cane, corn, fences, &c., (by General Clinch,) growing out of the occupation by Governor Call's army, could not have been less than twenty-five thousand dollars."

This testimony fully sustains the claim of General Clinch, and establishes the fact, that all the supplies thus obtained from the plantation of General Clinch were necessary, and could not be procured more cheaply—in fact, not so cheap—at any other place.

It also appears, from the certificate of M. M. Clark, assistant quartermaster general, that the corn could not have been placed at Fort Drane, in the fall of 1836, at a less cost to the Government than \$3 25 per bushel; and that hay could not have been placed there at less than \$4 25 per hundred pounds.

Major L. Fleming, in his affidavit, states "that he was at Lang Syne, the plantation of General Duncan L. Clinch, in Alachua county, Florida, in which is Fort Drane, toward the latter part of the time General Call's command occupied that post, in the fall of 1836; at which time he was a major of the 1st regiment of Florida volunteers, in the service of the United States." He further states, "that the command of General Call occupied that post about two weeks or more previous to the first march to the Withlacoochie, and about four weeks after returning from that expedition;

that upwards of twelve hundred horses belonged to the Tennessee brigade ; at least five hundred horses were attached to the army train, which consisted of one hundred wagons, averaging five horses to each wagon ; that about one hundred and fifty horses belonged to the Florida volunteers, which, together with the horses belonging to the train of artillery, to the field and staff officers, and to the friendly Indians, amounted, in his estimation, to two thousand two hundred ; that the horses were subsisted during the two weeks and the four weeks aforesaid principally on the sugar-cane and corn, the produce growing on said plantation of General D. L. Clinch ; that all the cane and corn were used as forage," &c.

The certificates of Colonel Mills, Colonel Warren, and Lieutenant Winder, of the artillery, as also Wagonmaster Taylor, differ in nothing material from the foregoing testimony.

The certificate of General Call states, that the army under his command in the campaign of 1836 were foraged for some time on the sugar-cane found at the plantation of General D. L. Clinch, in East Florida ; that, being entirely destitute of forage, the cane was necessary for their support, and without it many of the horses would have perished. He also states that the cane was indifferent ; that the Indians were there when the army arrived, and were in possession ; that there was a large quantity of cane—perhaps one hundred or more acres ; and that it was all consumed.

Major William M. Graham, who was in the service, and whose services and gallantry in Florida are well known, states, that he was stationed at Fort Drane ; that the buildings on the plantation of General Clinch were large and commodious, consisting of a large sugar-house, rolling-house, kitchen, cotton-house, corn houses, &c., most of all which were used as quarters, hospitals, store houses, magazines, &c., by the United States troops ; that when he left Fort Drane, in March, 1836, there was a large and valuable crop growing on the plantation of General Clinch, consisting mostly of cane and corn ; also, there was cotton and potatoes ; that it was understood by him, and, he believes, by the officers generally, that they were authorized by General Clinch to take and make use of, when necessary for the service, any property he had.

The committee have examined the case of Joseph M. Hernandez, which was reported on during the 2d session of the 25th Congress, and find that the principles which were adopted in that case will fully sustain and justify them in allowing the claim of General Clinch. For the use of the buildings on the plantation of General Clinch, which were used as quarters, hospitals, store-houses, magazines, &c., by the officers and troops, and for wood, destruction, and damages generally, nothing is claimed in the petition of General Clinch.

In the case of General Hernandez, the committee say : " Whatever property was thus taken possession of, and used, and consumed or destroyed, for the benefit of the service, and under circumstances that forbid the conclusion that the acts were wanton, ought to be paid for at a fair price." The plantation of General Clinch was taken possession of, with the houses, as a military post ; the corn and cane, in the language of Governor Call, were foraged on for his command ; being entirely destitute of forage, it was necessary for their support, and many of the horses would have perished without it : it was taken by his order. The extent to which payment should be made should be according to the worth of the corn and cane to the United States as forage. The cost to obtain corn and hay, and have each

delivered at Fort Drane, in the fall of 1836, the assistant quartermaster general says, would not have cost the Government less than \$3 25 per bushel, and hay not less than \$4 25 per hundred pounds. Supplies at this rate would have made the forage of each horse cost per day \$1 34; but the charge made by General Clinch for supplies furnished costs the Government but forty cents for each horse per day—an immense saving to the Government. The committee have taken the value or price claimed by General Clinch, and sustained by the testimony of Colonel Pierce and others. The General has claimed compensation for the fewest number of horses, at forty cents per day, and the smallest number of days; taking the lowest estimate contained in any of the testimony. When General Clinch presented his claim to the Quartermaster General, he expected to have it adjusted and paid under the "Act to provide for the payment of expenses incurred, and supplies furnished, on account of the militia and volunteers received into the service of the United States for the defence of Florida," approved 28th May, 1836. The Quartermaster General, whose duty it was to examine the claim of General Clinch, &c., in his report to the Third Auditor recommends its payment under the law, as will be seen by the following:

"QUARTERMASTER GENERAL'S OFFICE,
"Washington City, December 10, 1839.

"SIR: The claim of General Clinch, herewith enclosed, for forage furnished for the horses of Governor Call's army, in the months of October and November, 1836, is forwarded to you for decision, together with the certificates and affidavits offered in support of it, viz: those of Governor Call, Colonel Warren, Colonel Mills, Major Fleming, Assistant Quartermaster Clark, Wagonmaster Taylor, and Colonel Pierce and Lieutenant Winder of the army.

"These certificates appear to me to fully sustain the charge, and that the least number of horses which were, upon an average, foraged upon the sugar cane and corn of the General's plantation was the number stated in his account. Colonel Warren, it will be seen, states the number at more than 2,000; Major Fleming says about 2,200; Colonel Pierce says 2,500; Lieutenant Winder says from 1,500 to 2,000; Wagonmaster Taylor says from 1,500 to 2,000: and all appear to concur in the opinion that, without the use of this cane and corn, the horses must have perished, and the operations have been crippled, if not entirely checked. It is a matter of notoriety, that, under these circumstances, General Clinch did give his consent that his crops of growing cane and corn might be used as forage; and he says he was assured that it should be estimated and paid for. It appears that this was not done; and the General now states his account for it in a form which, in my opinion, is the best it could assume, viz: a certain sum per day for the forage of each horse, as there is no arriving at the quantity used, in weight or measure; and I understand him to say, that, although he has taken the lowest possible average number of horses, yet he means that the accounts, as stated, shall be in full for all claim by him for forage furnished to all horses of that army.

"If the certificate of Assistant Quartermaster Clark, as to what it would have cost to send forage to this plantation, (could it even have been procured at all, at that time,) be taken as the measure of value, each ration would have cost \$1 34; or, if the lowest ordinary price which has been

charged for fodder and corn in that country be assumed (viz: \$2 per hundred-weight for the former, and \$2 per bushel for the latter,) each ration would have cost 75 cents. In this view of the subject, the rate charged is a moderate one, even when the labor which it saved in cutting and securing is taken into consideration; and I think the account ought to be allowed.

"I have considered it my duty to express these views in forwarding the claim for decision; and I am, sir, very respectfully, your obedient servant,

"TH. S. JESUP,

"Quartermaster General.

"To PETER HAGNER, Esq.,

"Third Auditor, Treasury Department."

Upon the foregoing report and claim of General Clinch, the Third Auditor makes the following report, fully admitting the claim, but, concluding that the accounting officers could not pay it under the act of May, 1836, and recommends the petitioner to special legislation. The committee have thought it prudent to embrace in their report the Third Auditor's view of this claim, which is as follows:

"TREASURY DEPARTMENT,

"Third Auditor's Office, December 12, 1839.

"For foraging the horses of the army of Governor Call, on the growing sugar-cane and corn of my plantation, for six weeks, while lying at Fort Drane, in East Florida, in October and November, 1836—say 1,500 horses, upon an average each day, for 42 days, at the rate of 40 cents for each horse per day, \$25,200."

"It appears, from the certificates of Governor R. K. Call, Colonel W. J. Mills, Colonel John Warren, Lieutenant Colonel B. K. Pierce, and Lieut. John H. Winder, and the affidavits of L. Fleming and C. Taylor, that the horses of Governor Call's army, estimated to have been from 1,500 to 2,500 in number, were foraged in the months of October and November, 1836, upon the sugar-cane and corn of General Clinch's plantation; and Lieut. and Assistant Quartermaster M. M. Clark, in his certificate, states 'that corn could not have been placed at Fort Drane, in the fall of 1836, at a less cost to the Government than \$3 25 per bushel; and that hay could not have been placed there for less than \$4 25 per hundred pounds.'

"It is to be observed, that there is nothing in the evidence to show that the cane and corn upon General Clinch's plantation were purchased by any officer or agent of the United States; nor does the evidence furnished in support of the claim show that the cane and corn were used in virtue of any understanding between the commanding general (Governor Call) and General Clinch. The Quartermaster General, however, in his letter of the 10th instant, says: 'It is a matter of notoriety, that, under these circumstances, General Clinch did give his consent that his crops of growing cane and corn might be used as forage, and he says he was assured that it should be estimated and paid for.' Lieutenant Colonel B. K. Pierce, in his certificate, states, 'that during the occupation of General Clinch's plantation by the troops, I suggested to Governor Call the propriety of ordering a board of officers to assess the damages which General Clinch would be apt to sustain from the occupation of his premises by the troops; in the propriety and justice of which suggestion General Call concurred, and stated that it was his intention to do so; and furthermore, that my opinion

was concurred in by other officers. That the losses sustained in the destruction of his cane, corn, fences, &c., by General Clinch, growing out of the occupation of his plantation by Governor Call's army, could not have been less than twenty-five thousand dollars.

"Governor Call, in his certificate, after stating that a part of the horses of the army under his command in the campaign of 1836 were foraged for some time on the sugar-cane found at the plantation of General D. L. Clinch, and that it was necessary for their support, says: 'The plantation had been abandoned, and was in the possession of the Indians, when the army arrived.' The Governor also states in his certificate, that 'a quantity of cane was also made use of for the same purpose, at the plantation of Colonel McIntosh, in the same neighborhood; and part of his cane was very fine, and I should have caused both of these gentlemen to have been paid for their property thus appropriated to the public use, had I possessed the power.'

"From the evidence in this case, it seems to me that the claim of General Clinch is for property that must be considered as having been impressed, or as having been abandoned by him, and subsequently, and at the time of the arrival of the army at his plantation, in the possession of the enemy. In either case, I think the principle laid down by the Secretary of War, in his decision of the 8th of November, 1836, upon the 'act to provide for the payment of expenses incurred, and supplies furnished, on account of the militia and volunteers received into the service of the United States for the defence of Florida,' approved 28th May, 1836, is applicable to this claim. In that decision, although the act of 28th May, 1836, had been passed to authorize payment to be made for supplies, &c., that were not deemed admissible under previous laws and regulations, the Secretary of War decided that that act did 'not authorize any allowance for horses, or other property impressed into the service of the United States, nor for any special damage done to individuals or their property, by the troops of the United States, or the enemy. Cases of this sort have heretofore always been provided for by special acts of Congress, and the words of this law are not broad enough to authorize a departure from such practice.'

"The general features of this claim are similar to those of that of General Joseph M. Hernandez, which the accounting officers decided in November, 1836, and again in March, 1838, (when it was then re-submitted by the then acting Quartermaster General,) that it could not be admitted in the absence of special legislative authority for doing so.

"Subsequently, (say, on the 2d of March, 1839,) an act was passed for General Hernandez's relief.

"I am, therefore, of opinion that the claim of General Clinch cannot be allowed, in the absence of legislation in relation thereto.

"All the papers which were received with the Quartermaster General's letter of the 10th instant, in relation to the foregoing claim, are herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

"PETER HAGNER, Auditor.

"ALBION K. PARRIS, Esq.,

"Second Comptroller of the Treasury."

"TREASURY DEPARTMENT,
" *Second Comptroller's Office, December 17, 1839.*

"I concur with the Auditor in opinion, that the claim described in the foregoing report cannot be admitted by the accounting officers of the Treasury, under existing laws.

"ALBION K. PARRIS, *Comptroller.*"

The committee, after a careful examination of the testimony, and the reports of the Quartermaster General and the Third Auditor, are of opinion that the petitioner is entitled to relief; and report a bill accordingly.